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No. 314

In the Supreme Court of the United States

OCTOBER TERM, 1958

STATES STEAMSHIP COMPANY, a corporation,
PETITIONER

v.

UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY, and THE DOMINION OF CANADA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General.

SAMUEL D. SLADE,
WILLIAM E. MULLIN,
Attorneys,
Department of Justice,
Washington 25, D.C.

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In the Supreme Court of the United States

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No. 514

STATES STEAMSHIP COMPANY, a corporation, PETITIONER

v.

UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY, and THE DOMINION OF CANADA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the United States District Court for the District of Oregon (Pet. App. 1a-2a) was not reported. The three opinions of the Court of Appeals for the Ninth Circuit (Pet. App. 9a-45a) are reported at 259 F. 2d 458, 463, and 470.

JURISDICTION

The original judgment of the Court of Appeals was entered on May 31, 1957. A second judgment,

modifying the first judgment, was entered on November 15, 1957. A petition for rehearing on the second judgment was denied on August 20, 1958. The petition for certiorari was filed on November 13, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below correctly held that, in the circumstances of this case, petitioner was not entitled to limit its liability for damage resulting from the loss of its vessel due to unseaworthiness.

STATUTES INVOLVED

The relevant provisions of the Limitation of Liability Act (46 U.S.C. 183(a)) and the Carriage of Goods by Sea Act (46 U.S.C. 1303, 1304) are set forth in the Appendix, *infra*, pp. 19-20.

STATEMENT

Petitioner was the owner of the vessel S. S. PENNSYLVANIA, which was lost with all hands in the Gulf of Alaska on January 9, 1952, while en route to the Orient. Petitioner instituted this action by filing a petition for exoneration from, or limitation of, liability in the United States District Court for the District of Oregon (R. 3-9). Respondents, owners of cargo which sank with the ship, answered, objecting to the petition, and submitted claims for full damages. (*e.g.* R. 11-16, 17-24).[1]

[1] The death claims arising out of this action were settled out of court (Pet. App. 3a).

1. *Proceedings in the District Court.*

After a lengthy trial, the district court ruled (Pet. App. 6a, 7a) that petitioner was not entitled to exoneration from liability under the Carriage of Goods by Sea Act, 46 U.S.C. § 1303, 1304 (App. 19-20) because it had failed, in the words of that Act, "to exercise due diligence to make the ship seaworthy". The district court ruled, however, that the unseaworthiness of the vessel was "without the knowledge or privity" of petitioner, and that, under the Limitation of Liability Act, 46 U.S.C. § 183 (App. 19), petitioner's liability should be limited to the value of its interest in the PENNSYLVANIA and her freight, here of no value (Pet. App. 10a).

The district court found that the storm in which the S.S. PENNSYLVANIA sank "was not of such magnitude as to constitute a peril of the sea, the weather encountered * * * certainly was of a kind reasonably to have been expected in January on trans-Pacific voyages over the Great Circle route, and there was nothing catastrophic about the storm, as all other vessels in the area withstood the wind and the seas, the sole and proximate cause of the sinking of the PENNSYLVANIA being her own unseaworthiness." (Pet. App. 4a-5a). The district court further found that the factors which caused the sinking of the S.S. PENNSYLVANIA, as shown in the radiograms sent from the vessel immediately before she sank (Pet. App. 5a),[2] were as follows: (1) Water entered the

[2] These radiograms were introduced into the record as Exhibits 127 and 128.

engine room through a 14-foot crack which the vessel sustained down her port side; (2) The steering systems of the vessel broke down, and for a time the vessel could not be steered by any method; (3) The vessel was taking water in the No. 1 hold, the deck cargo on the forward deck had gone adrift, and the No. 2 hatch was open and full of water (Pet. App. 5a).

The district court found that these "faults, failures, breakdowns, and defects" were "factors of unseaworthiness culminating from the unseaworthy condition of the vessel at the inception of her voyage which prevented her from meeting the expected and to be anticipated weather conditions and proximately caused her sinking * * *." (Pet. App. 5a-6a). The court found that the evidence was insufficient to show that the petitioner used "the due diligence required by law to make the vessel seaworthy and to entitle it to exoneration from liability" (Pet. App. 6a). However, the court also found that "the unseaworthy condition of the vessel at the inception of her voyage was not with the privity and knowledge of the petitioner." (Pet. App. 6a).

The evidence which pointed to petitioner's responsibility for these factors of unseaworthiness may be summarized as follows: The S.S. PENNSYLVANIA was built for the United States Government in 1944 (R. 74). In 1951, the Government sold the vessel to petitioner without warranty. While owned by the Government, the vessel had undergone numerous incidents of hull damage, some of them severe and extensive (R. 2391-2430, 2439-2585). While owned by

petitioner, she made five voyages from the United States to the Orient and back, before her last and fatal voyage. On her fifth voyage, she suffered a 22-foot crack in her main deck (R. 161), designated a Class I casualty. (R. 1864-1865).[2] This crack occurred during rough weather with an air temperature of 54 (Ex. 44), which is a high temperature for a fracture to occur (R. 2773).

On suggestion from petitioner, the Captain turned back to Portland, Oregon (R. 111-112), where petitioner's head office for operations is located (R. 292). Mr. Lester Vallet, petitioner's Marine Superintendent and Port Engineer, boarded the vessel, surveyed the damage and made specifications for the repairs (R. 163). This crack began in a pad eye (R. 1859)[4] but Vallet did not inspect or otherwise test the vessel's pad eyes other than those in the immediate area of the crack (R. 167), despite the fact that the vessel had a history of cracking around pad eyes (R. 617, 638). Vallet had also read (R. 209) the 1946 report of the Ship Structure Committee (*supra*, fn. 3) to the effect that a crack in a vessel is an indication that it is crack sensitive,[5] and that a crack-sensitive

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[2] The final report of a Board of Investigation convened by order of the Secretary of the Navy to inquire into the design and construction of welded steel merchant vessels, dated July 15, 1946 (exhibit 185) defined a Class I casualty as "a fracture which has weakened the main hull structure so that the vessel is lost or is in a dangerous condition" (R. 1864-1865).

[4] A padeye is a loop usually welded down to a ship's deck for fastening cargo gear (R. 166).

[5] Petitioner (Pet., footnote 9) asserts that the Navy Board of Investigation "repudiated" the Board's statistical analysis

vessel is more apt to crack in cold weather than in warm (Exhibit 185).

While the vessel was undergoing these repairs, a crew member discovered that the emergency steering gear was not working (R. 344). Upon investigation, Vallet discovered that cargo in one of the holds, Army blankets and clothing, had become wrapped around the steering shaft, making it difficult to turn. The blankets and clothing were removed (R. 169 and 217), but nothing was done to prevent a recurrence of this condition (R. 372), though the No. 1 hold was loaded full of cargo on the fatal sixth voyage. There is no evidence that any comprehensive tests of the entire steering apparatus were taken at any time.

The vessel then continued the fifth voyage, during which another crack was discovered in the ship's structure (R. 2663). There is no evidence that this crack was ever repaired.

Upon completion of that voyage, the vessel went into drydock in Seattle. Mr. Vallet did not go to Seattle for the drydocking, (R. 178), but sent the Assistant Port Engineer, Mr. Brenneke (R. 331), who was fully empowered to take Mr. Vallet's place and perform his duties in Mr. Vallet's absence (R.

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on the recurrence of cracks. However, no one has repudiated the Committee's finding that there is such a thing as crack sensitivity. It would follow as a matter of common sense that the owner of a vessel which has suffered a serious fracture in warm weather is put on notice that his vessel may well be crack sensitive. In any event, the district court must have rejected this assertion by petitioner when it found petitioner to be negligent.

241, 2623-2624). Mr. Brenneke examined only the underwater portions of the vessel (R. 1718 and 1719), though he was instructed by Mr. Vallet to make a thorough examination (R. 271 and 272). Neither the representatives of the Coast Guard or of the American Bureau of Shipping, inspecting during the drydocking, received any information of anything unusual about the vessel, including the 22-foot crack on her last voyage. (R. 685, 769). They did not inspect the pad eyes and below decks for cracks, and there was no evidence that they inspected the steering apparatus (R. 652-695, 649-771).

The vessel came off the drydock December 22, 1951, and was loaded for her sixth and last voyage. Part of her deck cargo was corrosive acid, to be shipped for the Army (R. 2705, 2775). The Army specified that the acid was to be stowed in the wings of hatches Nos. 4 and 5 on the after deck (R. 2118, 2120, 2121 and 2128). The master, however, intervened during loading and ordered that the corrosive acid be stowed alongside the No. 2 hatch on the forward deck (R. 2687) where the acid cargo would be subject to a more severe battering in heavy weather (R. 2433, 2434, 2220 and 2705). The acid cargo was stored two tiers high (instead of one high as requested by the Army) (R. 1004) and lashed to pad eyes (R. 1040-1041, 1081). Petitioner was informed that the vessel had been loaded in this fashion (R. 1166 and 1167). It was petitioner's regular practice to approve the stowage arrangement before advising the master that he may leave (R. 284).

In spite of the knowledge by Vallet and Brenneke,

petitioner's marine superintendents, that the vessel may have had a defective steering gear, that in all likelihood it was crack sensitive, that it had been improperly stowed, and that it never had been thoroughly inspected, petitioner permitted the ship to leave on its last voyage to the Orient on January 5, 1952, without even instructing the master to take a warm water route.

2. *The proceedings on appeal.*

Petitioner appealed from the district court's ruling that it was not entitled to exoneration from liability, and respondents appealed from the ruling limiting petitioner's liability. The Court of Appeals for the Ninth Circuit, in an opinion filed May 31, 1957, affirmed the decision of the district court. Both sides petitioned for rehearing, and on November 15, 1957, the Court of Appeals filed its unanimous opinion denying the petitioner's request for rehearing, but modifying its original opinion by holding, on "further study of the record" (Pet. App. 20a), that the district court erred in limiting petitioner's liability. Petitioner applied for a rehearing. On August 20, 1958, the Court of Appeals denied petitioner's request and filed another unanimous opinion, which clarified its opinion of May 31, 1957.

The Court of Appeals held that the finding that petitioner did not exercise due diligence, upon which the district court's denial of exoneration was based, was abundantly supported by the evidence (Pet. App. 17a). However, the court below disagreed with the

view that petitioner did not have privity or knowledge, holding that "the only person whose negligence could have operated to bring about the unseaworthy condition, the only persons to whom the lack of due diligence could possibly be charged, where persons who were managing officers of the corporation. The court not only did not find that the failure to exercise due diligence was that of minor or subordinate employees, but the court could not have made such a finding" (Pet. App. 23a).

ARGUMENT

The holding of the Court of Appeals turns on the particular facts, presents no conflict of decisions requiring resolution by this Court, and involves the determination of a question of no general importance.[6] In view of the narrow implications of the rulings below, there is no need for further review.

1. (a) Petitioner (Pet. 15-19) contends that the Court of Appeals misapprehended the appellate review standards set down in *McAllister* v. *United States*, 348 U. S. 19, 20. In that case this Court held "In reviewing a judgment of a trial court, sitting without a jury in admiralty, the Court of Appeals may not set aside the judgment below unless it is

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[6] On the basic issue, namely, that the vessel was lost not by reason of a peril of the sea but as the result of unseaworthiness attributable to lack of due diligence, the two-court rule applies. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214.

clearly erroneous. * * * A finding is clearly erroneous when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed,' [citing cases]." The Court of Appeals applied that standard here, and we believe, was amply justified in concluding that the finding of petitioner's lack of privity or knowledge was clearly erroneous.

The trial court found that it was petitioner's lack of due diligence which caused the unseaworthiness of the S.S. PENNSYLVANIA. Yet all the evidence supporting this finding pointed to the lack of due diligence of Vallet and Brenneke, petitioner's managerial employees, and thus to the negligence of petitioner itself. To be sure, there was evidence in the case which might have supported a finding that Vallet and Brenneke were not negligent. But once this evidence was rejected in favor of a finding that they were negligent, (*i.e.*, that they had not used the due diligence necessary for petitioner's exoneration from liability under 46 U.S.C. § 183(a)) it necessarily followed, as the court below held, that they, and therefore petitioner, had "privity or knowledge" of the unseaworthiness of the vessel. There is no evidence to support petitioner's speculative hypothesis that "Such negligence may have related to something other than failure to correct the vessel's crack-sensitivity. It may have involved merely the neglect of a non-managerial employee to lash the deck cargo properly or to check the steering mechanism" (Pet. p. 16).

(b) The Court of Appeals, after an extensive study of the record in this case, became convinced 'that States Steamship Company failed to sustain its burden of proof to warrant a limitation of liability. [The record] clearly shows that the unseaworthiness which the court found to be the cause of the loss, and due to the owner's lack of due diligence, was with the privity and knowledge of its managerial employees." (Pet. App. 20a). A reading of the opinions below shows clearly that the decision by the Court of Appeals does not, as petitioner asserts (Pet. pp. 19-25), involve an "equation" of the concepts of negligence and knowledge, or any "absolute imputation" of knowledge, as a rule of law applicable to other cases.[7] Rather, the Court of Appeals merely "pointed out that *upon this record* such negligence [*i.e.*, the negligence resulting in the unseaworthiness of the S.S. PENNSYLVANIA] was necessarily the negligence of Vallet" (emphasis and explanation supplied) (Pet. App. 42a).

(c) None of the cases cited by petitioner in any way affects the validity of the result reached below. *Coryell* v. *Phipps*, 317 U.S. 406 (cited Pet. p. 21) was a case in which the trial court found that a fire

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[7] Petitioner perhaps has been misled by some language in the court's opinion of November 15, 1957, which, given one interpretation, might be taken to mean that the finding of lack of due diligence on the part of an owner of a vessel is *always* inconsistent with a finding that the owner was without privity or knowledge (Pet. App. 21a, 22a). Petitioner fails to mention that the Court of Appeals in its opinion of August 20, 1958, expressly struck this language from its prior opinion (Pet. App. 45a).

on board the owners' ships was proximately caused by fumes emanating from a leak in the vessel's engine. The leak was caused by the passage of time, rather than faulty installation of the engines. The owner had no clue that this condition existed, and had done all he could to ascertain that the vessel was safe. This Court, in affirming the district and circuit courts, held that under these findings the petitioner had met his burden of proving that he was without "knowledge or privity" of the fault which caused the fire. The Court expressly distinguished those cases in which "it is held that liability may not be limited under the statute where the negligence is that of an executive officer, manager or superintendent whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred". (317 U.S. at 410). The other cases cited by petitioner (Pet. p. 22) are equally distinguishable on their facts; all are similar to *Coryell* v. *Phipps* in that the owner of the vessel in each of these cases met his burden of proof that neither the owner nor any of its managerial employees were privy to any negligence, or had knowledge of any fault, which caused the accident in question.

The facts of the present case are more closely related to those in *Spencer Kellog & Sons* v. *Hicks*, 285 U.S. 502, cited approvingly in *Coryell* v. *Phipps* (317 U.S. 406, 410). There the corporate owner of a launch known to be unseaworthy in conditions of icy water was denied limitation of liability where it was shown

that its manager in charge had reason to know that the water would be icy on the day of the voyage, but failed to order the master of the vessel not to sail. Also similar is *The Silver Palm*, 94 F. 2d 776, where a collision was caused by ignorance on the part of the master of one of the vessels of an unusual steering gear on his vessel. The owner of the vessel was not permitted to limit its liability, since, by not telling the master about the steering gear, it had privity and knowledge of the fault which caused the collision.

The petition here appears to overlook the important fact that the cases discussed above involved the Limitation Act alone. The owner of the vessel in each of them was not contending that he was entitled to exoneration from liability under the Carriage of Goods by Sea Act, 46 U.S.C. 1303(1)(a). He was attempting to show that he had no "privity or knowledge" of the negligence of a non-managerial employee or other person which caused the accident. Apart from the unfounded speculation noted, p. 10, *supra*, petitioner does not seriously attempt to make such a case here, and, as the Court of Appeals held (see p. 9, *supra*), it cannot be made on the evidence of record.

2. The petition also cites (Pet. p. 21) *Earle & Stoddardt* v. *Ellerman's Wilson Line*, 287 U.S. 420, on the issue of "non-delegable duty". Petitioner also quotes (Pet. p. 20), with disapproval, a discussion in a treatise[8] on the question of "non-delegable du-

[8] Gilmore and Black, *The Law of Admiralty* (1957).

These references are irrelevant here, for there o issue of "non-delegable duty". The petition s no claim, nor could it, that Vallet or Brenneke ated any managerial duty to a non-managerial oyee, or that the knowledge of the vessel's unsea- hiness, upon which the finding of negligence was l, was the knowledge of anyone other than Vallet renneke.

titioner suggests, apparently under a theory of gation" (Pet. p. 20, 21), that Vallet, who had vledge that the vessel was unseaworthy, should ntitled to rely on the reports of the Coast Guard the American Bureau of Shipping and thus ld be absolved from his duty not to allow the el to be put to sea in a condition known by him unseaworthy. This contention is insubstantial, ially in view of the fact that the inspection by representatives of the Coast Guard and the ican Bureau of Shipping was not complete, and t did not tell the representatives what he knew t the vessel's unseaworthiness. The court below ved (Pet. App. 31a, 32a):

The record warranted the court's evident conclusion that an inspection of a vessel known to have a history of crack sensitiveness and particularly a history of a Class 1 fracture, should be much more careful and elaborate than this vessel ever had. The company itself was chargeable with knowledge of the pending inspection and yet it failed through Vallet or Brenneke or any other person to inform the inspectors of these special conditions attending the ship. In the words used in

> the *Silver Palm, supra*, all these circumstances "made the more imperative the obligation of the owner and operator to advise" of the special circumstances calling for a special inspection and a more thorough one than had been given.

This language by the court below shows that the recent decision of the Court of Appeals for the Second Circuit in *Peter Paul, Inc.* v. *Rederi A/B Pulp*, 258 F. 2d 901, is not in conflict with the decision below, as petitioner asserts (Pet. p. 25-26). In the *Peter Paul* case, a vessel owner petitioned for exoneration from liability after its ship cracked in two and the forward part sank. There was no evidence that the vessel was crack sensitive or that the owner had reason to know that it was crack sensitive. The Court of Appeals for the Second Circuit stated that "[t]he Christer Salen had been roving the seven seas for years without displaying the slightest indication of her latent unseaworthiness; the operation of her eight sisterships likewise furnished no clues of any inherent danger." These circumstances, coupled with the fact that a Lloyd's ship surveyor had inspected the hull of the ship and pronounced it in good condition, supported a holding by the district court that the owner was not obliged, under his duty to use due diligence to make the ship seaworthy before it went to sea, to install crack arresters. The court expressly distinguished the instant case, 258 F. 2d at 905:

> The recent case of *States Steamship Co.* v. *United States*, 9 Cir., —— F. 2d ——, is distinguishable for similar reasons. In that case

the S.S. Pennsylvania sunk with all hands, apparently because of a major fracture. The twenty-two foot crack in her deck which occurred on the voyage immediately preceeding the disaster should have put the owner on notice that he had an unseaworthy vessel.

3. Finally, this case has no importance beyond its particular and special facts. The articles from marine journals (Pet. p. 31) and the remarks of the General Counsel for the United States Maritime Commission (Pet. p. 32), were prepared before the third opinion of the court below was filed on August 20, 1958. The following excerpts from that opinion make clear the narrowness of the court's holding:

> The Steamship Company argues that in drawing our conclusions we have set forth a broad rule that in any case where the Steamship Company fails to use due diligence to make the vessel seaworthy at the inception of her voyage, limitation must be denied. We did not so hold.
>
> * * * *
>
> It is * * * apparent that the district court found there was negligence. After noting that the finding was abundantly supported by evidence, *we have by our decision pointed out that upon this record such negligence was necessarily the negligence of Vallet.* Accordingly we hold limitation of liability must be denied.
>
> * * * *
>
> Petitioners make reference to the portions of the evidence in the record which they say tends to show that the steel of the Pennsylvania was no different from the steel of all welded ships

built at the same time. Reference is made to technical reports and to testimony of witnesses who surveyed and inspected the ship or samples of her steel tending to show that there was no lack of due diligence in making the ship seaworthy. There is no question but that the record contains a substantial amount of evidence to that effect. *The difficulty is that the trial court rejected it in the findings which we have quoted above.* When the court found that the proximate cause of the sinking was the Pennsylvania's unseaworthiness; that the crack sensitiveness by reason of her former 22 foot crack in her deck was a factor of unseaworthiness culminating from her unseaworthy condition at the inception of her voyage and that there was a lack of due diligence to make the vessel seaworthy, it rejected the contrary evidence now cited to us in the Steamship Company's petition for rehearing.

It is suggested that there is something in our opinion to the effect that all welded steel vessels are unseaworthy. As authority for this assertion petitioner quotes from a television broadcast in which the broadcaster purports to construe the meaning of our decision. The broadcaster is mistaken; *we did not so hold.*

The petition contains a table taken from one of the exhibits in the case showing the number of fractures and casualties in some 4694 ships built by the Maritime Commission. This table shows a substantial number of fractures and casualties. On the basis of this, petitioner asserts that in respect to the likelihood of cracks and fractures, the Pennsylvania was exactly like all other welded steel ships and is no dif-

ferent from the bulk of dry cargo tonnage in the American Merchant Marine.

But the 127 cases of serious casualties listed in this table do not contain any Victory class vessels such as the Pennylvania [sic.] *The Pennsylvania was unique in its prior Class I hull fracture on Voyage V.* The testimony showed that there had been over 2000 shipping years of experience with Victory ships and there was no history of a Class I casualty on such a ship. The failure of due diligence found by the court was in sending a ship *known* to be crack sensitive upon that voyage.

The suggestion that our decision puts all welded ships out of business over the northern route is wholly unwarranted. [Emphasis supplied; Pet. App. 38a, 41a-42a, 44a, 45a].[9]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

SAMUEL D. SLADE,
WILLIAM E. MULLIN,
Attorneys.

DECEMBER 1958.

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[9] The third opinion by the court below also shows clearly that the arguments on the merits urged in the motion by other steamship companies for leave to file an *amicus curiae* brief, have no application to this case.

APPENDIX

1. The Limitation of Liability Act, 46 U.S.C. 183 (a), provides as follows:

> § 183. *Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel."*
>
> (a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

2. The Carriage of Goods by Sea Act, 46 U.S.C. 1303 (1)(a), 1304 (1), 1304 (3), provides as follows:

> § 1303. *Responsibilities and liabilities of carrier and ship—(1) Seaworthiness.*
>
> The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—
>
> (a) Make the ship seaworthy;
>
> * * * * *
>
> § 1304. *Rights and immunities of carrier and ship —(1) Unseaworthiness.*

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 1303 of this title. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

* * * *

(3) *Freedom from negligence.*

The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

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